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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,037	09/21/2005	Jonathan Charles Burr	JUSL-120 (62800-033)	4781
23630 7590 03/12/2009 MCDERMOTT WILL & EMERY LLP 28 STATE STREET BOSTON, MA 02109-1775			EXAMINER ZANELLI, MICHAEL J	
			ART UNIT 3661	PAPER NUMBER
			MAIL DATE 03/12/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/526,037

**Applicant(s)**

BURR ET AL.

**Examiner**

Michael J. Zanelli

**Art Unit**

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 6/20/05: 4/17/08  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This application has been examined. The preliminary amendment filed 2/28/05 via PCT has been entered. Claims 1-17 are pending.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
3. The IDS filed 6/20/05 and 4/17/08 have been considered as indicated. DE-19638798 was not considered because a translation or statement of relevancy was not provided as required.
4. Claim 16 is objected to because of the following informalities: The word "control" (line 1) does not appear to be appropriate in the context used (i.e., the code "controls" a computer whereas a programmed computer performs the method). The examiner suggests using the word "perform" to more accurately describe the invention.
5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
6. Claim 16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 16 is directed to a computer program without a computer-readable medium necessary for imparting the computer program's functionality. Computer programs in and of themselves do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. Such computer programs constitute functional descriptive material which is

nonstatutory. See MPEP 2106(IV)(B)(1)(a). The claimed "computer program product" includes non-executable forms such as a printed program code listing. The examiner suggests rewriting the claim as "A computer program product stored on a computer-readable medium comprising ...".

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1, 7-9, 16 and 17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gaspard, II (2002/0055818).

A. As per claims 1, 16 and 17, Gaspard discloses a computer-based system and method for planning a journey for a vehicle in which scheduling criteria including transit point data (i.e., destinations) are received along with map data comprising one or more routes in order to plan a journey whereby historical data is taken into account representative of traffic conditions along given route segments (Abs; [0041-0043]). Gaspard discloses using historical travel times along route segments to forecast traffic conditions along a given route. The claimed invention refers specifically to historical speed data; however, travel speed and travel time are inherently linked to one another. In the alternative, one of ordinary skill in the vehicle route determining arts would have found it obvious to alternatively express the historical traffic information in terms of speed insofar as for a given length of road, time and speed are mathematically linked to one another.

B. As per claims 7-9, as above whereby Gaspard uses a programmed computer to perform route planning whereby one or more known route determining algorithms would have been utilized to generate a route optimized for time, distance, speed, cost, etc.

10. Claims 2-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaspard, II in view of Westerlage et al. (5,724,243).

A. As per claims 2-6 and 10, Gaspard is applied as above whereby it appears that the journey is planned prior to departure. The claimed invention differs in that the journey is re-planned after the vehicle departs upon occurrence of some unexpected event. However, it was known in the vehicle navigation arts to include the ability to re-plan a determined route after departure upon encountering an unexpected event (i.e., traffic, accident, construction, etc.).

B. Westerlage represents one example of the known prior art whereby unexpected events encountered on a guidance route triggers the re-planning of the route (see col. 6:45-60). One of ordinary skill in the navigation arts would have found it obvious to include the capability of re-planning a route after departure because it would have enabled one to proceed to a desired destination when an unexpected event prevented guidance along the originally planned route.

11. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaspard, II in view of Westerlage et al., Myr (6,480,783), Xu et al. (6,401,027) and Martin et al. (5,272,638).

A. As per claims 11-15, Gaspard and Westerlage are applied as above. Claims 11-15 are directed to the collection of the speed data by floating vehicles and to use the information to create, verify and/or update the historical speed data. As noted above, the prior art discloses maintaining historical time/speed data for the purpose of route determination.

- B. At the time of applicant's invention, it was well known in the navigation arts to collect traffic information from probe vehicles and to use that information to create an historical traffic database whereby "normal" traffic conditions for given route segments are correlated with date/time information. It was further known to use this information in conjunction with real-time traffic information in order to forecast future traffic conditions which may impact the determination of an optimum route to a given destination(s). See as exemplary the patents to Myr, Xu and Martin. One of ordinary skill in the navigation arts would have found it obvious to incorporate the known prior art to generate the historical database used by Gaspard and to combine that information with real-time traffic information to forecast future traffic conditions for a given route, thus resulting in a more optimized route determination.
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (571) 272-6969. The examiner can normally be reached on Monday-Thursday 9:00 AM - 4:00 PM.
- If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J. Zanelli/  
Primary Examiner  
Art Unit 3661